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JUL 21 1993

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Before The

Federal Communications Commission JUL 21 1993

Washington, D.C. 20554

expenditure of the resources of the parties as well as the agency if the issues remain. Therefore, permission to appeal should be granted. See 47 C.F.R. § 1.301(b). Specifically, the MO&O designates two related issues dealing with Moonbeam's financial certification based plainly on error of fact. In response to the Section III, Question 3 of FCC Form 301, Moonbeam initially indicated that the "Source of Funds" was at Alex, Brown & Sons ("Alex, Brown"), a stock brokerage firm. Alex, Brown was in fact the repository of the funds Ms. Constant was to supply to Moonbeam.² During the amendment as of right period, the Moonbeam application was amended simply to more accurately reflect the situation. The Bureau had these facts before it when it released the Hearing Designation Order and saw no reason to include those issues. It thus appears that consideration of the petition was foreclosed by *Anax Broadcasting, Inc.*, 87 FCC 2d 483, n. 11 (1981). Mary Constant's Alex, Brown accounts were and continue to be Moonbeam's source of funding. There has been no change in the funding source nor any discrepancy or variation in Moonbeam's financial representations or qualifications.

The factual error is even more fundamental. The documents being produced today corroborate Ms. Constant's representations in here declaration submitted as Exhibit A to Moonbeam's Opposition to the Second Petition to Enlarge. Contrary to the MO&O's assumption, there was no change in the ultimate provider of funds to Moonbeam. The provider of funds was at all times Mary Constant. Nor has the

² J. Langwith Manion was listed as a "banker" on Moonbeam's original application. As reflected on Ms. Constant's Alex, Brown account statements (see Exhibit 1), Mr. Manion was Ms. Constant's "investment representative" in August, 1991, continued to be her "investment representative in November, 1991, was still her "investment representative in June, 1993, and continues to be such as of this date.

respository for those funds changed. It was in November 1991, March 1992 and continues to be to this day, Ms. Constant's investment accounts with Alex, Brown. Ms. Constant's declaration states in unequivocal terms that Ms. Constant's initial application listed the custodian of the funds she has earmarked for the construction and operation of the station, and the name of her "investment representative" at that institution, instead of her name and address as owner of the account. That fact was voluntarily clarified in her March 2, 1991 amendment. Ms. Constant's money is -- and was at the time of her initial application -- held at Alex, Brown & Sons, Inc.

Furthermore, Willson's Petition did not in any manner whatsoever contain facts which, even if assumed true, could possibly raise a substantial and material question of fact. The face of the account statement produced to Mr. Willson in discovery and submitted by Willson as Exhibit 2 to the Second Motion to Enlarge prove that the Alex, Brown & Son accounts referred to initially in the application were and remain the same accounts owned by Ms. Constant and relied upon in the application to fund the construction and operation of the station.

The amount of assets available from the Alex, Brown accounts consistently exceeds the estimated necessary funding for the station. As clearly stated by Ms. Constant under penalty of perjury, she prepared a financial summary in the form of a "balance sheet" as part of the certification process slightly before she filed the application, and that "balance sheet" showed more than sufficient available funds to construct and operate the station for three months without income. That "balance

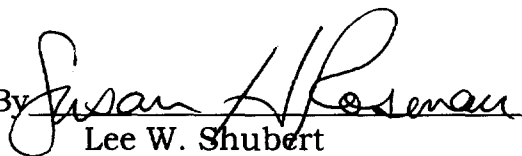
sheet" was misplaced during her move to Calistoga and, in fact, had not been previously produced because of the pending objection to the document request. The objection having been denied,³ the "balance sheet," dated as of August 30, 1991, has been produced today and a copy attached hereto. See Exhibit 1.

It is evident on the face of the documents being produced today that the source of funds has never changed. All Moonbeam did in its amendment as of right was to more accurately reflect that the funds were and always had been Mary Constant's.

WHEREFORE, Moonbeam respectfully requests leave to file an interlocutory appeal of the Presiding Officer's Order designating financial issues against Moonbeam.

Respectfully submitted,

MOONBEAM, INC.

By 
Lee W. Shubert
Susan H. Rosenau

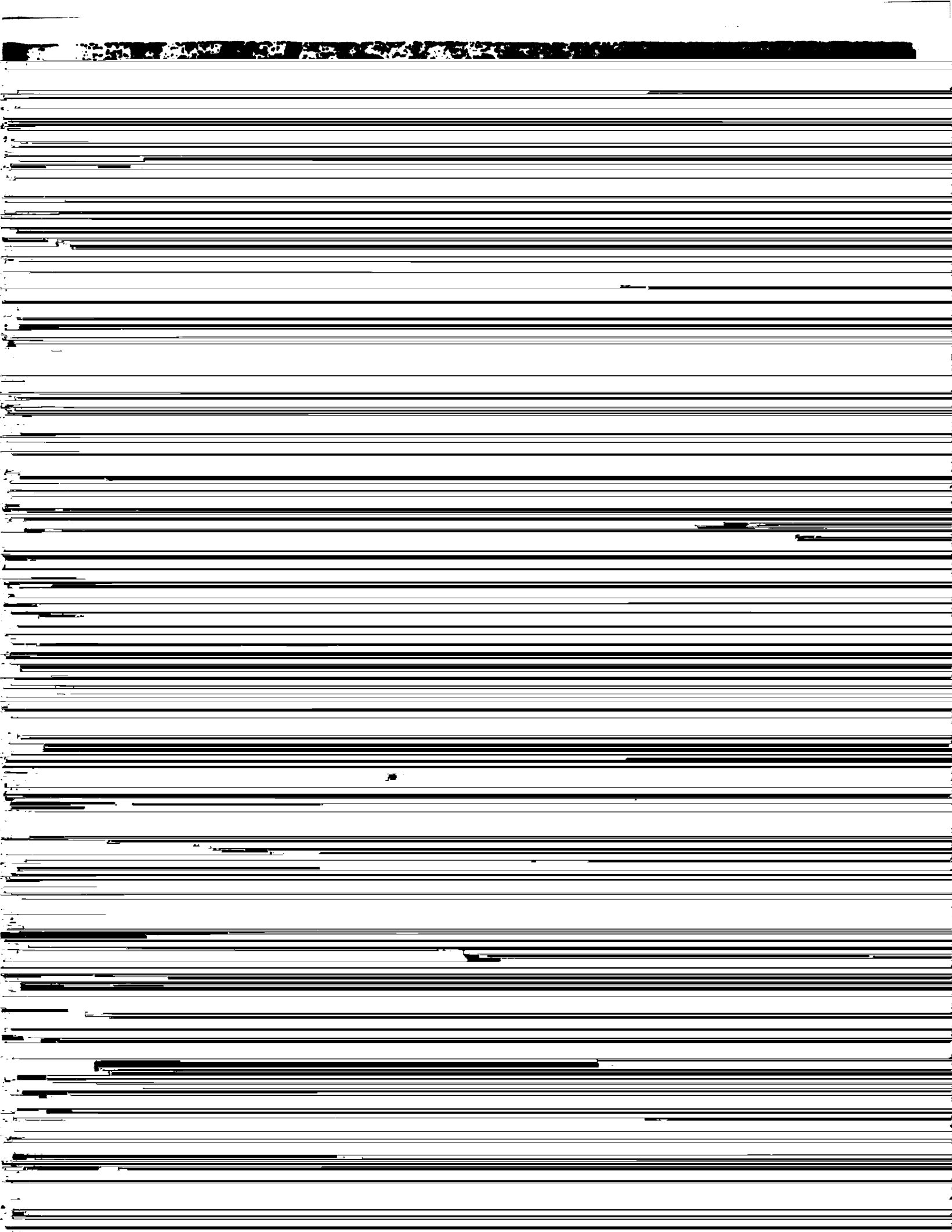
Its Attorneys

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Suite 900
4350 North Fairfax Drive
Arlington, VA 22203-1633
703/841-0606

July 21, 1993

³ Order, FCC 93M-453, released July 12, 1993.

EXHIBIT 1



August, 1991
Account Statements

ALEX. BROWN & SONS
ACCOUNT 247-14758

CUSTOMER STATEMENTS
TAX ID 555-72-1568 JULY 27 - AUGUST 30, 1991

01 1 00 177581-018

MARY P CONSTANT
511007 THE MOON
NICASIO CA 94946

YOUR INVESTMENT REPRESENTATIVE IS:
J LAMWITH MANION, JR
365 CALIFORNIA ST. 28TH FLOOR
SAN FRANCISCO CA 94104
IRM 247-068 PHONE 415-384-2800
TOLL FREE (800) 334-2640

MONEY MARKET FUND 7 DAY AVERAGE YIELDS
ALEX. BROWN CASH RESERVE PRIME 5.27%
ALEX. BROWN CASH RESERVE TREASURY 5.09%
ALEX. BROWN CASH RESERVE TAX FREE 3.90%

ASSETS			LIABILITIES	
	AMOUNT	PERCENT OF PORTFOLIO		AMOUNT
CASH	18,383.77	16 %	CASH	
MONEY FUNDS			MARGIN LOAN	
MUNICIPAL ISSUES			SHORT OPTIONS	
BOND SECURITIES			OTHER SHORT SECURITIES	
CORPORATE BONDS				
INVESTMENT BILLS	75,476.00	60 %		
SAVINGS				
MUTUAL FUNDS				
LTD PARTNERSHIPS	5,523.00	5 %		
OTHER				
TOTAL ASSETS \$	117,493.37		TOTAL LIABILITIES \$	00
NET VALUE OF YOUR ACCOUNT \$			CURRENT ESTIMATED YIELD	
* EXCLUDES UNPRICED SECURITIES			ESTIMATED ANNUAL INCOME	
			3.50 %	
			84,102.00	

ALEX. BROWN & SONS

ACCOUNT 247-16120

CUSTOMER STATEMENTS

TAX ID 333-72-1568

JULY 27 - AUGUST 30, 1991

01 1 00 17036-010

MART F CONSTANT
 AMERIS & BLANCO RET FUND
 INDOOT THE MOON
 NILESIO CA 94946

YOUR INVESTMENT REPRESENTATIVE IS:

J LANGWITH MANION, JR
 345 CALIFORNIA ST, 24TH FLOOR
 SAN FRANCISCO CA 94104
 IRN 247-008 PHONE 415-544-2800
 TOLL FREE (800) 334-2640

MONEY MARKET FUND 7 DAY AVERAGE YIELDS

ALEX. BROWN CASH RESERVE PRIME 5.27%
 ALEX. BROWN CASH RESERVE TREASURY 5.09%
 ALEX. BROWN CASH RESERVE TAX FREE 3.90%

ASSETS		PERCENT OF TOTAL PORTFOLIO		LIABILITIES	
	AMOUNT				AMOUNT
CASH				CASH	
MONEY FUNDS	6,395.26	11 X		MARGIN LOAN	
BOND				SHORT TERM SECURITIES	
MUNICIPAL ISSUES					
GOV. SECURITIES					
CORPORATE ISSUES					
CONVERTIBLE BONDS					
HYBRID	49,500.00	89 X			
ARTICLE					
MUTUAL FUNDS					
LTD PARTNERSHIPS					
OTHER					
TOTAL ASSETS \$	55,895.26			TOTAL LIABILITIES \$	00
NET VALUE OF YOUR ACCOUNT \$	55,895.26			CURRENT ESTIMATED YIELD	
* EXCLUDES OVERPRICED SECURITIES				ESTIMATED ANNUAL INCOME	3337.00 X

August, 1991
Balance Sheet

Mary F. Constant
Balance Sheet for Calistoga Application
August 30, 1991

Liquid Assets

Cash & listed securities: in excess of \$170,000
Accounts receivable: not included

Current Liabilities

Bills, taxes, and all other: less than \$17,000.

Net available liquid assets: in excess
for construction, and for of \$153,000
three months of operation
and application processing:

June, 1993
Account Statement

B

INCORPORATED

ACCOUNT 247-14758

TAX ID 555-72-1568

MAY 29 - JUNE 25, 1993

6/20

MARY F CONSTANT
 DIAMOND MOUNTAIN VINYARD
 2121 DIAMOND MOUNTAIN ROAD
 CALISTOGA CA 94515-9636

YOUR INVESTMENT REPRESENTATIVE IS:

J LANGWITH MANION, JR
 101 CALIFORNIA ST. 46TH FLOOR
 SAN FRANCISCO CA 94111
 IR# 247-068 PHONE 415-544-2800
 TOLL FREE (800) 334-2640

MONEY MARKET FUND 7 DAY AVERAGE YIELDS

ALEX. BROWN CASH RESERVE PRIME 2.53%
 ALEX. BROWN CASH RESERVE TREASURY 2.47%
 ALEX. BROWN CASH RESERVE TAX FREE 1.64%

ASSETS			LIABILITIES	
	AMOUNT	PERCENT OF YOUR PORTFOLIO		AMOUNT
CASH			CASH	
MONEY FUNDS	393,903.99	93 %	MARGIN LOAN	
CD'S			SHORT OPTIONS	
MUNICIPAL ISSUES			OTHER SHORT SECURITIES	
GOVT SECURITIES				
CORPORATE ISSUES				
CONVERTIBLE BONDS				
STOCKS	22,725.00	5 %		
OPTIONS				
MUTUAL FUNDS				
LTD PARTNERSHIPS				
OTHER	5,150.00	1 %		
Total Assets \$	421,778.99		Total Liabilities \$.00
NET VALUE OF YOUR ACCOUNT \$ 421,778.99			CURRENT ESTIMATED YIELD 1.70 %	
* EXCLUDES UNPRICED SECURITIES			ESTIMATED ANNUAL INCOME \$7,180.00	

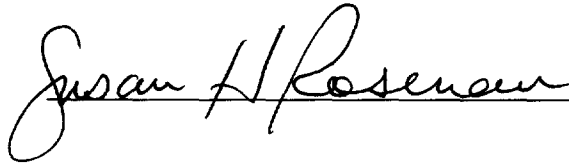
CERTIFICATE OF SERVICE

The undersigned, an employee of Haley, Bader & Potts, hereby certifies that the foregoing Request for Permission to File Interlocutory Appeal was hand-delivered, to the following:

A. Wray Fitch, III, Esquire
Gammon & Grange
8280 Greensboro Drive
McLean, VA 22102-3807

Administrative Law Judge Edward Luton
2000 L Street N.W.
Washington, D.C. 20036

Larry Miller, Esquire*
Federal Communications Commission
Mass Media Bureau, Hearing Branch
Suite 7212
2025 M Street N.W.
Washington, D.C. 20554

A handwritten signature in cursive script, reading "Susan H. Roseman", written over a horizontal line.

July 21, 1993